



Opposition based centrally on its INTERLINK registrations, and its related registration for PLASMALINK.

3. The discovery period is currently open until September 30, 2002 in this Opposition, and Opposer served written discovery upon Applicant on March 15, 2002. Opposer gave Applicant three extensions of thirty days in which to respond, and therefore Applicant's responses to discovery are due on July 19, 2002. Applicant presented Opposer with discovery on March 27, 2002, and due to the extensions also given Opposer, its responses are due on August 1, 2002. Therefore, Applicant will not be prejudiced by the requested amendment to Opposer's Notice of Opposition.

4. Opposer's attorney wrote to Applicant's attorney requesting consent for this amendment on June 6, 2002. Applicant's counsel has refused consent at this time.

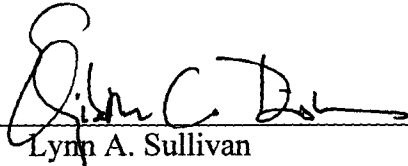
5. The case law supports freely granting motions for leave to amend the pleadings when the proceeding is still in the discovery stage. *See e.g., Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S. P.Q.2d 1503 (TTAB 1993) (no prejudice to Applicant shown because discovery was still open); *United States Olympic Committee v. O-M Break Inc.*, 26 U.S.P.Q.2d 1221 (TTAB 1993) (Applicant not prejudiced because proceeding was still in pre-trial stage); *Microsoft Corp. v. Qantel Business Systems, Inc.*, 16 US.P.Q.2d 1732 (TTAB 1990) (Applicant not unduly prejudiced because proceeding was still in discovery stage.) Leave must be freely granted when justice so requires. T.M.B.P. § 507.02; F.R.C.P. 15(a).

6. In this case, there is no foreseeable harm to Applicant if Opposer is granted this request for leave to file its amended complaint. To the contrary, granting this amendment will streamline the issues and process for the Board and Applicant.

WHEREFORE, Opposer respectfully moves this Board to grant Opposer leave to amend its Notice of Opposition.

Respectfully submitted,

Date: July 18, 2002



Lynn A. Sullivan  
Elizabeth C. Diskin  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
Chicago, Illinois 60601  
312/616-5600

Attorneys for Opposer

# EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                              |   |                         |
|------------------------------|---|-------------------------|
| Baxter International Inc.,   | ) |                         |
|                              | ) |                         |
| Opposer,                     | ) |                         |
|                              | ) |                         |
| v.                           | ) | Opposition No. 91150298 |
|                              | ) | Serial No. 76/151,380   |
| Inviro Medical Devices Ltd., | ) |                         |
|                              | ) |                         |
| Applicant.                   | ) |                         |

**AMENDED NOTICE OF OPPOSITION**

In the matter of application Serial No. 76/151380 for registration of the alleged mark ULTRALINK in International Class 10 by Inviro Medical Devices, Ltd. (hereinafter "Applicant"), which was published in the Official Gazette on August 7, 2001, at page TM 222, Baxter International Inc. (hereinafter "Opposer"), a corporation of Delaware, located at One Baxter Parkway, Deerfield, Illinois 60015, who previously timely filed a Request for Extension to Oppose this application, believes it will be damaged by the registration, and therefore opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant seeks to register ULTRALINK as a trademark in International Class 10 for "medical devices, namely cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" as evidenced by the publication of said mark in the Official Gazette on page TM 222 of the August 7, 2001 issue.
2. Opposer has for many years been engaged in the manufacture, marketing and sale of infusion apparatus and instruments to the medical industry.

3. Opposer owns numerous registrations and applications with the "LINK" suffix in connection with infusion products and products related thereto. Opposer owns (3) INTERLINK registrations under Registration No. 1,721,708 for "medical apparatus; namely, fluid administration set, extension set, secondary medication set, catheter extension set, y-type catheter extension set and IV connector loop set, all sets primarily composed of tubing, drip chamber, clamps, spike, hangers, finger guards, drop formers, injection sites, flow regulators, connectors, heparin locks, locking adapters, and tip protectors"; No. 1,812,016 for "medical apparatus, namely cannula"; No. 1,821,178 for "medical apparatus, namely syringes, drug vials, drug vial stoppers and drug vial adapters"; all in International Class 10. The foregoing INTERLINK registrations are valid, subsisting and are all incontestable registrations. Copies of the Registration Certificates are attached hereto as Exhibit A.

4. In addition to the INTERLINK registrations described above, Opposer owns PLASMALINK, Registration No. 2,304,595 for "medical apparatus, namely, a plasma pooling and sampling system comprised of medical kits, consisting primarily of plastic tubing and glass or plastic containers, used for processing blood and blood components" which is sold in commerce in connection with some of Opposer's INTERLINK brand goods. (See Exhibit B).

5. Based on its use of the INTERLINK and PLASMALINK marks, Opposer has developed substantial good will therein and public recognition thereof, and said marks have come to identify Opposer's products to the medical infusion market and the relevant purchasing public.

6. On information and belief, Opposer's INTERLINK mark is one of the best known brands for infusion products. Opposer's INTERLINK products have been in the marketplace for more than 10 years.

7. The products recited in pending application U.S. Serial No. 76/151380 and upon which Applicant apparently intends to use the pending mark, likewise are directed to the same medical infusion products market and concern identical goods to one of Opposer's INTERLINK products, namely cannulae, injection syringes, connectors and injection sites.

8. Opposer's goods and Applicant's respective goods are both used in connection with infusion of a fluid into a patient's bloodstream. The products are identical and the nature of the use of the products are identical.

9. Upon information and belief, Applicant will be promoting and marketing its ULTRALINK product to the same hospitals, acute-care facilities, clinics and physicians as Opposer.

10. Upon information and belief, Applicant's product would be marketed and promoted at the same trade shows and through the same trade publications, as where Opposer's INTERLINK product is and has been marketed and promoted for years.

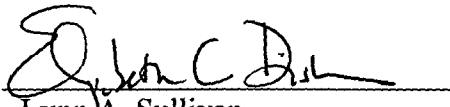
11. Upon information and belief, Opposer's goods and Applicant's respective goods are directed to the same segment of the same industry and through the same trade channels. Such customers would likely be familiar with Opposer's goods and would likely believe that Applicant's goods were somehow related to, complementary to, or otherwise authorized by Opposer.

12. Applicant's potential mark ULTRALINK is very similar in sight, sound and commercial impression to Opposer's registered mark INTERLINK and its other "LINK" mark, is identical in product and nature of the product use, will be marketed and sold to the same industry and through the same trade channels, and is therefore, likely to cause confusion or mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that the registration of pending U.S. Serial No. 76/151380 be denied. The applicable fee of \$300.00 to file this opposition was submitted with the original Notice of Opposition.

Respectfully submitted,

Date: July 18, 2002

By:   
Lynn A. Sullivan  
Elizabeth C. Diskin  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza  
Suite 4900  
Chicago, Illinois 60601  
(312) 616-5600

Attorneys for Opposer  
Baxter International Inc.



# **EXHIBIT A**

Int. Cl.: 10

Prior U.S. Cl.: 44

**United States Patent and Trademark Office**

Reg. No. 1,821,178

Registered Feb. 15, 1994

**TRADEMARK  
PRINCIPAL REGISTER**

**INTERLINK**

BAXTER INTERNATIONAL INC. (DELAWARE  
CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015

FOR: MEDICAL APPARATUS; NAMELY, SY-  
RINGES, DRUG VIALS, DRUG VIAL STOP-  
PERS AND DRUG VIAL ADAPTERS, IN  
CLASS 10 (U.S. CL. 44).

FIRST USE 2-8-1990; IN COMMERCE  
2-8-1990.

OWNER OF U.S. REG. NO. 1,721,708.

SER. NO. 74-402,606, FILED 6-17-1993.

JULIA A. HARDY, EXAMINING ATTORNEY

**Int. Cl.: 10**

**Prior U.S. Cl.: 44**

**United States Patent and Trademark Office**

**Reg. No. 1,812,016**

**Registered Dec. 21, 1993**

**TRADEMARK  
PRINCIPAL REGISTER**

**INTERLINK**

**BAXTER INTERNATIONAL INC. (DELAWARE  
CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015**

**FIRST USE 10-2-1990; IN COMMERCE  
10-2-1990.**

**SER. NO. 74-379,211, FILED 4-15-1993.**

**FOR: MEDICAL APPARATUS; NAMELY,  
CANNULA, IN CLASS 10 (U.S. CL. 44).**

**ESTHER A. BORSUK, EXAMINING ATTOR-  
NEY**

**Int. Cl.: 10**

**Prior U.S. Cl.: 44**

**United States Patent and Trademark Office**

**Reg. No. 1,721,708**

**Registered Oct. 6, 1992**

**TRADEMARK  
PRINCIPAL REGISTER**

**INTERLINK**

**BAXTER INTERNATIONAL INC. (DELAWARE  
CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015**

**FOR: MEDICAL APPARATUS; NAMELY,  
FLUID ADMINISTRATION SET, EXTENSION  
SET, SECONDARY MEDICATION SET, CATH-  
ETER EXTENSION SET, Y-TYPE CATHETER  
EXTENSION SET AND I.V. CONNECTOR  
LOOP SET, ALL SETS PRIMARILY COM-  
POSED OF TUBING, DRIP CHAMBER,**

**CLAMPS, SPIKE, HANGERS, FINGER  
GUARDS, DROP FORMERS, INJECTION  
SITES, FLOW REGULATORS, CONNECTORS,  
HEPARIN LOCKS, LOCKING ADAPTERS,  
AND TIP PROTECTORS, IN CLASS 10 (U.S. CL.  
44).**

**FIRST USE 10-2-1990; IN COMMERCE  
10-2-1990.**

**SER. NO. 74-188,893, FILED 7-26-1991.**

**LINDA E. BLOHM, EXAMINING ATTORNEY**

# EXHIBIT B

Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

United States Patent and Trademark Office

Reg. No. 2,304,595

Registered Dec. 28, 1999

**TRADEMARK  
PRINCIPAL REGISTER**

**PLASMALINK**

BAXTER INTERNATIONAL INC. (DELAWARE  
CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015

FOR: MEDICAL APPARATUS, NAMELY, A  
PLASMA POOLING AND SAMPLING SYSTEM  
COMPRISED OF MEDICAL KITS, CONSIST-  
ING PRIMARILY OF PLASTIC TUBING AND  
GLASS OR PLASTIC CONTAINERS, USED

FOR PROCESSING BLOOD AND BLOOD COM-  
PONENTS, IN CLASS 10 (U.S. CLS. 26, 39 AND  
44).

FIRST USE 2-25-1998; IN COMMERCE  
2-25-1998.

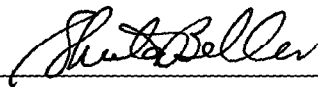
SN 75-334,712, FILED 7-31-1997.

KAREN K. BUSH, EXAMINING ATTORNEY

**CERTIFICATE OF MAILING**

I hereby certify that this **MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **Box TTAB-NO FEE**, Arlington, Virginia 22202-3513 on July 18, 2002.

Date: July 18, 2002

  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** (along with any documents referred to as being attached or enclosed) was sent on this 18th day of July, 2002, via United States Mail, first class postage prepaid, to:

Duane M. Byers  
Nixon & Vanderhye P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22202-4714

  
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